No. 89-1997

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY,
Petitioner,

vs.

RUDOLPH G. BABCOCK,
Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeal Of Louisiana, Fourth Circuit

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF OF THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS, CHRISTIAN LEGAL SOCIETY, AND NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A. AS *AMICI CURIAE* IN SUPPORT OF PETITION

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

Pursuant to Rule 37.2 of the Rules of this Court, the Baptist Joint Committee on Public Affairs, on behalf of itself and the other *Amici* joining herewith, moves this Court for leave to file the accompanying Brief *Amici Curiae*.

Consent for the filing of this Brief has been obtained in writing from Petitioner. This consent has been filed with the Clerk. Counsel for Respondent, however, has declined either to consent or to object, thus necessitating this Motion.

Research reveals this case to be the only reported decision in which a civil court has ordered a theological seminary to confer a degree upon a seminarian whom the seminary deems to be unfit for Christian ministry. The ruling below sets a most dangerous precedent for Louisiana, as well as other jurisdictions. It will substantially impair the right of theological seminaries to conduct their affairs autonomously, without governmental interference.

As is more fully set forth in the accompanying Brief, the lower court's decision completely disregarded this Court's long-standing rule and practice of respecting the churches' autonomy to decide their own internal issues. If ever there were a case to which this constitutional principle applied, it would be this one. Civil courts are particularly incompetent to second-guess the fundamentally religious decisions of a wholly sectarian theological seminary concerning the matriculation and graduation of one of its students based on moral fitness.

The Baptist Joint Committee is composed of representatives from eight national cooperating Baptist conventions and conferences in the United States and deals exclusively with issues pertaining to religious liberty and church-state separation. It has been in existence for fifty-three years and has filed numerous *amicus* briefs before this Court. The other *amici* have a long-standing interest and involvement in church-state issues and likewise have written many briefs. *See* Brief, pp. 3-4. Accordingly, *amici* have both the experience and the expertise to assist the Court in the review of the serious church-state issues involved in this case.

The conventions and conferences that compose the Baptist Joint Committee govern or substantially contribute to numerous theological seminaries that would be adversely affected by the ruling below. *See* Brief, p. 2. The constituent members of the National Council of Churches likewise support numerous seminaries. Thus, in addition to their concern for the pure religious liberty and church-state issues, the Baptist Joint Committee and the other *amici* have a profound interest in theological education and are alarmed by the extent to which the ruling below adversely affects that effort.

Thus, *amici* are uniquely suited to address the legal issues that are raised in this case at the point where the First Amendment and theological education intersect. And, it is particularly important here that the Baptist Joint Committee—a church-state agency for the denomination specifically affected by the lower court's decision—be heard on this issue.

For the reasons set forth in this Motion and the accompanying Brief, *amici* respectfully urge this Court to grant

this Motion and allow them to file this Brief *Amici Curiae.*

Respectfully submitted,

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QUESTION PRESENTED

Does a civil court have jurisdiction to review a theological seminary's determination that a seminarian is spiritually and morally unfit for Christian ministry and, therefore, an inappropriate candidate for a divinity degree?

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Pursuant to Rule 37.2 of the Rules of this Court, the Baptist Joint Committee on Public Affairs, Christian Legal Society, and National Council of Churches of Christ in the U.S.A. file this brief in support of the Petition for Writ of Certiorari.

INTEREST OF *AMICI CURIAE*

The Baptist Joint Committee on Public Affairs is composed of representatives from eight national cooperating Baptist conventions and conferences in the United States and deals exclusively with issues pertaining to religious liberty and church-state separation. These organizations, with a combined membership in excess of 27 million people, include: American Baptist Churches in the U.S.A.; Baptist General Conference; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc.; North American Baptist Conference; Progressive National Baptist Convention, Inc.; Seventh Day Baptist General Conference; and Southern Baptist Convention.[1]

These eight Baptist conventions and conferences own, govern, or substantially contribute to numerous theological seminaries that would be adversely affected by the ruling below.[2]

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[1] Because of the congregational autonomy of individual Baptist churches, the Baptist Joint Committee does not purport to speak for all Baptists.

[2] These seminaries are: Southwestern Baptist Theological Seminary, Southern Baptist Theological Seminary, Golden Gate Baptist Theological Seminary, Southeastern Baptist Theological Seminary, Midwestern Baptist Theological Seminary, and New Orleans Baptist Theological Seminary (Southern Baptist Convention); American Baptist Seminary of the West, Andover Newton Theological School, Central Baptist Theological Seminary, Colgate Rochester/Bexley Hall/Crozer, Eastern Baptist Theological Seminary, Evangelical Seminary of Puerto Rico, Morehouse School of Religion, Northern Baptist Theological Seminary, and The School of Theology of Virginia Union University (American Baptist Churches in the U.S.A.); North American Baptist Seminary (North American Baptist Conference); Bethel College and Seminary (Baptist General

The Christian Legal Society is a non-profit, professional association of 4,000 judges, attorneys, law professors, and law students, founded in 1961.

The National Council of Churches of Christ in the U.S.A. is a community of communions composed of thirty-two religious bodies having over forty million constituents in the United States. Its public positions are based on policies adopted by its Governing Board, composed of about two hundred fifty members selected by the member denominations in proportion to their size and support of the Council.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides in part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....

The Fourteenth Amendment to the Constitution of the United States provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or

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Conference); American Baptist Seminary (National Baptist Convention of America); Morehouse School of Religion, American Baptist Seminary, Howard University School of Divinity, Washington Baptist Seminary, The School of Theology of Virginia Union University, and Shaw Divinity School (Progressive National Baptist Convention, Inc.).

enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SUMMARY OF ARGUMENT

The decision of the court below is as astonishing as it is unprecedented. A theological seminary is thoroughly sectarian and, therefore, is the equivalent of a church for First Amendment purposes. The Louisiana court ordered a theological seminary to award a divinity degree to one of its seminarians after the seminary determined him to be unfit for Christian ministry.

One is hard pressed to imagine a civil act more inimical to the free exercise of religion or more likely to result in excessive church-state entanglement under the establishment clause. Indeed, the deleterious impact of this decision on New Orleans Baptist Theological Seminary ("Seminary") is overshadowed only by the far-flung precedential effect on the rights of other churches and religious institutions, particularly in the State of Louisiana.

This Court has long held that it will not exercise jurisdiction to decide cases involving internal church doctrine, polity, administration, or discipline. Instead, it will defer to the appropriate decision-making authority in the church to make such decisions. *E.g.*, *Jones v. Wolf*, 443 U.S. 595 (1979); *Watson v. Jones*, 13 Wall. 679 (1872). In line with this long-standing policy and rule of decision, certiorari should be granted to rectify this constitutional miscarriage.

REASONS FOR GRANTING THE PETITION

For more than a century this Court has recognized that internal church disputes concerning theology, ecclesiology, administration, or church discipline are not justiciable. This rule of deference by the civil courts to the churches in deciding internal religious controversies was originally decided as a matter of federal common law. *Watson v. Jones*, *supra*. Later this Court heard the "clear constitutional ring" of the right of churches and religious organizations to decide their own doctrine and church practice and to order their internal affairs without compulsion or influence from the civil courts. *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969). This Court has since held that the *Watson* rule is mandated by the First Amendment either because of feared entanglement under the establishment clause or because of the prospect of a chill on the free exercise of religion. *See, e.g., Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696 (1976); *Jones v. Wolf*, *supra*.

If ever there were a case to which these salubrious constitutional principles applied full force, it would be this one. The civil courts are singularly ill-equipped to review the fundamentally spiritual exercise of determining whom a seminary will allow to matriculate and graduate and, thus, endorse as properly trained and morally fit to minister to its churches. It is no more the business of the courts to decide this issue than it is to rule on the efficacy of prayer or the quality of a sermon.

Although Baptist seminaries do not "ordain" seminarians, awarding a Master of Divinity degree is no less significant a religious exercise. Indeed, the degree represents the seminary's imprimatur—its "stamp of approval"—by which it holds the seminarian out to the churches as qualified to minister.[3] (A-23).

The Louisiana appellate court, while purporting to follow Louisiana precedent, rendered a decision that flouts this Court's uniform teaching on the church autonomy issue. The court erroneously declared this case to be justiciable and proceeded to decide it as an ordinary contract claim for equitable relief. The court reached this result by following this faulty reasoning: (1) the Seminary is not the functional equivalent of a "church," and, even if it were, its controversy with Babcock would not interfere with the relationship between a "church" and its "minister," and (2) the dispute does not involve a "matter purely of ecclesiastical concern." (A-12). Hence, the court concluded the instant dispute falls outside this Court's non-justiciability rule.

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[3] Baptist congregational polity makes the awarding of a seminary degree even more critical to a student's placement than in hierarchically governed denominations. In the latter, bishops screen young ministers, match congregational need with pastoral talent, and make special arrangements for less popular ministers. In contrast, the placement process in Southern Baptist congregations is unstructured. There is no bishop. Under the leadership of the Holy Spirit, churches and ministers fend for themselves in a nearly laissez-faire system of competition in which churches rely heavily upon the seminary degree and recommendation as important indicia of pastoral qualification.

I. THE SEMINARY IS THE EQUIVALENT OF A "CHURCH," AND THE FACT THAT BABCOCK DOES NOT "MINISTER" ON ITS BEHALF IS IRRELEVANT.

While it is true that they are not literally "churches," seminaries are the equivalent of churches for First Amendment purposes. Although some Baptist colleges have been held to be "pervasively sectarian," the character and purposes of a Baptist seminary render it "wholly sectarian." *E.E.O.C. v. Southwestern Baptist Theological Seminary*, 651 F.2d 277, 281 (5th Cir. 1981). A seminary does not exist to provide educational services on a contract basis to self-selecting consumers but solely to prepare for ministry the people it deems acceptable for that sacred service.

This is the case at the Seminary here. Its very reason for existence is to develop "spiritually mature leaders who are ... compassionately committed for evangelical Christian ministries in the modern world."[4] The

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[4] NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY BULLETIN, 1987-88, 2. This is generally the case in all Baptist seminaries. For example, the stated purpose of the oldest Southern Baptist seminary, located in Louisville, Kentucky, is: "... to conduct a program of ... theological education designed to equip both men and women students for effective Christian leadership in church-related ministries." McCall, *Southern Seminary in Baptist Life Around the World*, 81 REVIEW AND EXPOSITOR 393 (1984). Similarly, Southwestern Baptist Theological Seminary in Fort Worth, Texas, the largest Southern Baptist seminary, is committed "to provide theological education, with the Bible as the center of the curriculum for God-called men and women to meet the need for trained leadership in the work of the churches." *E.E.O.C. v. Southwestern Baptist Theological Seminary*, *supra*, at 279.

Seminary is established, owned, and governed by the Southern Baptist Convention. The Southern Baptist Convention provides most of the financial support for the Seminary.[5] The Convention is financed through funds contributed by local Baptist churches.

Thus, the Southern Baptist Convention is a communion of autonomous local churches that have banded together for purposes of joint ministry; Southern Baptist seminaries are simply the vehicles through which individual churches nurture, educate, and indoctrinate their future ministers. *Crowder v. Southern Baptist Convention*, 828 F.2d 718, 719 (11th Cir. 1987); *E.E.O.C. v. Southwestern Baptist Theological Seminary*, *supra*, at 283.

The intimate relationship between Baptist seminaries and the churches they serve is also highlighted by the churches' involvement in selecting and encouraging prospective seminarians. To be eligible for admission to the Seminary, applicants are required to have been a Christian for at least a year and then secure the recommendation and approval of a local church. (A-4). Moreover, the applicant must aver to the experience of a divine calling to ministry as a further condition for admission. (A-4). That calling is usually recognized and confirmed by a ceremony involving "the laying on of hands" by the local church. *See* Acts 13:3. Thus, it is the religious commitment of the prospective seminarian, as confirmed by the local church, that determines admission to the Seminary.

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[5]Students pay no tuition; they are charged only a nominal "matriculation fee." (A-4).

Theological education is central to Baptist ecclesiology. "The Baptist Faith and Message" provides with respect to education:

> The cause of education ... should receive ... the liberal support of the churches. An adequate system of Christian schools is necessary to a complete spiritual program for Christ's people.... The freedom of a teacher in a ... seminary is limited by the pre-eminence of Jesus Christ, by the authoritative nature of the Scriptures, and by the distinct purpose for which the school exists.[6]

Indeed, of every dollar contributed to the Southern Baptist Convention's Cooperative Program, twenty cents is used to fund the Convention's six theological seminaries.[7]

In sum, Baptists recognize the importance of theological education. Each autonomous Baptist church could simply hire a teacher to educate its next minister. Rather than doing this, however, Southern Baptist churches have decided to join together in a Convention, pool their funds, and then cause the Convention to establish and operate seminaries to train the next generation of ministers in collective, cooperative fashion. The church and its seminaries cannot be separated for

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[6]H. HOBBS, THE BAPTIST FAITH AND MESSAGE, 111 (1971). Historically, Baptist denominations have not been creedal. Nevertheless, they have acknowledged generally agreed-upon precepts in a number of "confessions." The most widely followed confession of faith for Southern Baptists is "The Baptist Faith and Message."

[7]ANNUAL OF THE SOUTHERN BAPTIST CONVENTION, 1989, 63 (reporting data from 1987-88).

any practical purpose, including the application of the First Amendment.

Noting that the relationship between an organized church and its ministers is its "life blood," the Fifth Circuit in *E.E.O.C. v. Southwestern Baptist Theological Seminary*, *supra*, at 283, found that the Seminary's sister institution is "principally supported and wholly controlled by the Convention for the avowed purpose of training ministers to serve the Baptist denomination." As such, the court concluded the seminary is "entitled to the status of 'church.'" *Id.*

Thus, precedent, as much as reason and logic, leads to the compelling conclusion that seminaries in general and this Seminary in particular are wholly sectarian in their makeup and are the equivalent of a church for First Amendment purposes.

The Louisiana court also mistakenly assumed that this Court's church autonomy cases apply only to situations involving the relationship between "ministers" and the church on whose behalf they serve. This is an overly restrictive reading of this Court's jurisprudence. The non-justiciability of an ecclesiastical dispute depends not on the relationship between the parties (church-minister) but rather on the religious nature of the issue to be decided. *E.g.*, *Jones v. Wolf*, *supra*; *Watson v. Jones*, *supra*.

Here the dispute between the Seminary and Babcock goes to the very heart of Baptist theology and ecclesiology. It is the spiritual formation that occurs at the Seminary that prepares a student for vocational ministry. As mentioned above, it is the Seminary's "stamp of approval" on a candidate for ministry that, in the eyes

of the local church, attests to the fitness of the seminarian for ministry. The fact that the seminarian is not a "minister" *of* the Seminary is immaterial, because the Seminary is engaged in the decidedly spiritual enterprise of training those who will minister to the local churches. In this sense, a seminary is not simply the functional equivalent of a church. It is the churches' womb.

Hence, the wholly sectarian Seminary must be seen and evaluated as part and parcel of its supporting churches. The question of the matriculation and graduation of a student is fundamentally spiritual and religious and, therefore, beyond the jurisdiction of the civil courts.

II. THE DISPUTE HERE INVOLVES ESSENTIALLY ECCLESIASTICAL ISSUES AND ONLY INCIDENTALLY PROPERTY ISSUES.

The relationship between the wholly sectarian Seminary and one of its seminarians is patently one that involves spiritual and ecclesiastical matters and not one susceptible of civil court adjudication. The Louisiana court came to a contrary conclusion for two basic reasons.

First, it characterized the dispute as one involving a breach of contract, not amounting to a "purely ecclesiastical concern." The decisions of this Court have never taught that a dispute needs to be *purely* ecclesiastical for it to fall within the non-justiciability rule. Actually, the rule seems to be to the contrary. That is, if there is *any* substantial ecclesiastical question—even if accompanied by a property dispute—the courts will defer to the religious body for decision.

Thus, in deciding "neutral principles of law," if a case involves the interpretation of secular documents of ownership—yet requires the civil court to resolve a religious controversy—then the court must defer to the ecclesiastical body for a decision. *Jones v. Wolf*, *supra*, at 604.

And, in *Serbian Eastern Orthodox v. Milivojevich*, *supra*, this Court refused to decide the case even though it "incidentally" affected church property and other secular matters. Professor Tribe's analysis of *Serbian Eastern Orthodox* is incisive. He notes the distinction that is made between disputes over church property "as such" and religious disputes that only "incidentally" affect church property or other secular matters. This Court has the duty to adjudicate the first category — property disputes "as such"—but, as to the second, must defer to the decision of the proper church body despite the fact that the dispute includes some property issues.[8]

There can be no question that the instant case not only presents religious and spiritual questions, but such questions in fact predominate over any incidental contract issues. Here the fundamental issue was Babcock's moral and spiritual fitness to matriculate at and graduate from the Seminary and the Seminary's right to decide such issues without being second-guessed by secular courts.

These uniquely religious and spiritual issues even pervade the alleged "contract." For example, the

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[8]L. TRIBE, AMERICAN CONSTITUTIONAL LAW 1241 (2d ed. 1988).

student handbook clearly expresses the Seminary's religious tenet concerning divorce and marital discord. (A-5). The handbook reserves *carte blanche* authority to take disciplinary action "against any student whose conduct is ... immoral or whose attendance at the Seminary is against the best interests of the Seminary." (A-5). The Seminary *Bulletin* also allows unfettered discretion in the faculty committee to disapprove any student's graduation for "spiritual, moral, mental, or other reasons." The Seminary further retains the right to "withhold the degree [the student] otherwise has earned." (A-10).

Thus, even the "contract," which allegedly forms the basis of the application of "neutral principles of law," is saturated with and conditioned by ecclesiastical and spiritual issues.

This is further supported by an Eleventh Circuit decision involving the Southern Baptist Convention, in which the court found issues far more secular than the ones involved here to be outside the scope of its jurisdiction for decision. In *Crowder v. Southern Baptist Convention*, *supra*, a disgruntled "messenger" (i.e., delegate) to a Southern Baptist Convention annual meeting brought a suit challenging the propriety of enforcing a parliamentary ruling made by the Convention president when it had been overruled by a majority of the Convention body. After meticulously reviewing this Court's church autonomy jurisprudence, the court held that it could not even apply and interpret the "contract document" (i.e., *Robert's Rules of Order*) to a Convention meeting. The court went on to rule that even these manifestly secular issues bore "only a

tangential relationship to property rights" and, therefore, provided only an "insubstantial interest in obtaining a civil court forum." *Id.* at 727.

If the issues in *Crowder*—shorn of apparent theological, doctrinal, or ecclesiastical significance—caused the Eleventh Circuit to decline jurisdiction, then certainly the instant case demands a similar result. This Court denied certiorari. *Crowder v. Southern Baptist Convention*, 108 S.Ct. 1028 (1988).

The second basis on which the court below ruled in favor of Babcock is that the Seminary allegedly did not follow its internal procedures in seeking to block his graduation and did not accord him a full panoply of due process rights. In short, the lower court held that the behavior of the Seminary was "arbitrary." (A-19).

For the reasons set forth in the Petition for Certiorari, these activities were in no way arbitrary. But, even if they were "arbitrary," the courts should still decline to assume jurisdiction to review that decision.

Whatever validity this Court's "arbitrariness" exception had under *Gonzalez v. Archbishop*, 280 U.S. 1 (1929), was soundly repudiated in *Serbian Eastern Orthodox Diocese*, *supra*. There, this Court reviewed the lower court's determination that the decision of the church was "arbitrary" because it had not followed its own procedures in arriving at the decision. This Court concluded that there is "no 'arbitariness' exception—in the sense of an inquiry whether the decision of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations...." *Id.* at

713. The consideration of whether a church's action violates some secular notion of arbitrariness is "exactly the inquiry that the First Amendment prohibits...." *Id.*

Again, a recent circuit court decision is helpful. In *Natal v. The Christian and Missionary Alliance*, 878 F.2d 1575 (1st Cir. 1989), a minister sued his church for wrongful termination, alleging that he had been discharged when the church "failed to follow its own rules, thereby denying the pastor 'due process' ...." *Id.* at 1577. Rejecting this contention, the First Circuit noted that it was "beyond peradventure that civil courts cannot adjudicate disputes turning on church policy and administration or on religious doctrine and practice." *Id.* at 1576. The court then accepted the church's decision because "by its very nature, the inquiry ... into the circumstances of [the pastor's] discharge plunges an inquisitor into a maelstrom of church policy, administration and governance." *Id.* at 1579.

Finally, the fact that the instant case involves disciplinary action by the Seminary against the seminarian removes this case further from judicial scrutiny. There is little doubt after *Serbian Eastern Orthodox Diocese* that "questions of church discipline ... are at the core of ecclesiastical concern." *Id.* at 717. *Accord Crowder v. Southern Baptist Convention*, 828 F.2d, at 724.

Thus, the steps that a church or a theological seminary takes to discipline one of its members is a quintessentially religious issue that the courts are particularly disqualified from addressing.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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